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IN THE

Supreme Court of the United States

October Term, 1970.

No. 69

ALLIE REYNOLDS, on behalf of himself, and all other former and present Major League Baseball Players similarly situated,

Petitioner,

against

JOHN W. GALBREATH, CALVIN GRIFFITH, JAMES P. BUNNING and RICHARD HALL, as constituting the Major League Baseball Players' Pension Committee, and CHARLES SEGAR as the Major League Baseball Players' Pension Committee Administrator,

and

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The petitioner, Allie Reynolds, on behalf of himself and all other former and present Major League Baseball Players similarly situated, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, filed June 25, 1970, affirming the order of the United States District Court for the Southern District of New York, William B. Herlands, Judge, granting respondents' motion for summary judgment.

Opinion Below

The opinion of the Court of Appeals, not officially reported, which affirms the order of the District Court on the basis of Judge Herlands' opinion is attached hereto as Appendix A.

The opinion of Judge Herlands in the District Court, not officially reported, is attached hereto as Appendix B.

Jurisdiction

The judgment of the Court of Appeals was entered on June 25, 1970. Copy is attached as Appendix C. No rehearing or extension of time to petition for certiorari was sought. This Court's jurisdiction is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. Was the Court of Appeals correct in affirming Judge Herlands' holding that a writing of a date subsequent to the alleged oral agreement, evidencing the same, is of no significance with respect to the enforceability of such agreement?

2. Was the Court of Appeals correct in holding, without the opportunity for exploration of intention afforded by a trial, that an oral agreement, conceded for the purpose of the motion to have been made, that all players active, inactive or retired should share equally in all future increases of pension benefits, was inconsistent with and hence not collateral to a subsequent formal agreement which empowered the Pension Committee to "study and determine what modifications and amendments should be made in the Present Plan including the

type of plan, rights, benefits and costs," and which confided to the Pension Committee "full and complete charge of the administration and operation of such Pension Plan and the Pension Fund"?

In other words, is it so clear that the power of "modifications and amendments" and "administration and operation" of the Pension Plan includes the power to determine among players, all of whom are covered by said plan, which ones shall be deprived of increased benefits, that the deprived ones may not be afforded a day in Court to prove that the Pension Committee was never intended to have this power, but that, on the contrary, this power had been by the terms of the oral agreement concededly made, expressly denied to the Pension Committee?

3. Was the Court of Appeals correct in holding that no trial was necessary to determine whether or not under the facts the Pension Committee was estopped to deprive the inactive players of the increased pension benefits, in view of their claim that they had given up independent representation on the Pension Committee in favor of representation by active players, in reliance upon the promise that all future increases in benefits would be for their benefit as well as that of the active players?

4. Was the Court of Appeals correct in affirming Judge Herlands' decision that there can be no restriction on the authority of the Pension Committee because of the assumed grant to it of full authority to administer the Pension Plan, even though the method of exercise of such authority in the case at bar, i. e. depriving inactive players of increased benefits granted to active players, violated an agreement to the contrary concededly made?

Statute Involved

There is here involved Section 5-701 of the General Obligations Law of the State of New York, known as the Statute of Frauds, the relevant portion of which is as follows:

"5-701. AGREEMENTS REQUIRED TO BE IN WRITING

Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

"1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;"

Statement

The Court of Appeals for the Second Circuit affirmed, on the basis of the opinion of the late Judge Herlands, the granting by him of respondents' motion for summary judgment dismissing the complaint. This class action was brought by the plaintiff, a former Major League baseball player, against the Major League Baseball Players' Pension Committee and its administrator.

In 1947, the Major League Baseball Players' "Annuity and Insurance Plan" was established by agreement among the sixteen Major League clubs. This plan was established as the result of first, a threatened strike and appeal to the National Labor Relations Board by the Pittsburg National League Club and second, by the defection of various Major League players to the Mexican League.

The 1947 plan was terminable at any time at the whim of the club owners and provided very meager benefits.

In 1953, Allie Reynolds, the plaintiff in the action, who was the Player Representative elected by the players of the eight American League clubs, and Ralph Kiner, the Player Representative elected by the players of the National League clubs, retained J. Norman Lewis, a New York lawyer, to negotiate with the club owners for improvement generally of the situation of the players and particularly for the improvement of pension benefits. Thereupon the club owners retaliated by appointing a committee of two owner representatives, Hank Greenberg, for the American League and John W. Galbreath, for the National League, to study and report on the termination of the then existing Annuity and Insurance Plan which was terminable at the will of the owners.

After a meeting on December 14, 1953, among Greenberg, Galbreath, Kiner, Reynolds and Lewis, another meeting was held on February 16, 1954 at which, after protracted discussion, an agreement was reached. This agreement contemplated the establishment of a Pension Plan to be financed by 60% of the proceeds from the annual All Stars Game and 60% of the proceeds from the radio and TV rights of the World Series and the All-Star Game. The old Annuity and Insurance Plan was to be continued until the 1956 season, the new plan to be inaugurated with the 1957 season. It was also agreed that there be established a committee of four men to be charged with the administration and operation of the new Pension Plan, this committee to consist of two owners and two players or former players. The memorandum of the committee's agreement, which was unsigned, is annexed hereto as Appendix "D".

The negotiators also agreed that all future increased pension benefits would be shared equally by all members

of the Plan, active, inactive and retired. This agreement was not recited in the memorandum. However, the fact that it was made was conceded by the defendants for the purposes of the motion and indeed, the documentary evidence hereinafter referred to establishes beyond any doubt that it was in fact made.

On March 12, 1954, a Memorandum was executed (subsequently ratified and approved by the sixteen club owners and the baseball players). This Memorandum, which is set forth as Appendix "E", substantially embodied the terms of the February 16, 1954 agreement but varied therefrom in at least one significant particular. Whereas the earlier agreement described the proposed player members of the Pension Committee as active or former players, the March 12, 1954 memorandum restricted this membership to active players. Subsequently, and on or about October 1, 1954, formal agreements dated October 1, 1954, were executed. These agreements are annexed hereto as Appendix "F".

In 1961, the Pension Committee amended the Plan to provide that for the period commencing April, 1962 and ending March, 1967, there would be substantially increased benefits accruing to members of the Plan. However, these increased benefits were not extended to those players who were not active subsequent to 1951 nor to those who had already elected to take their pensions.

In December, 1962, a class action similar to that in the instant case, was commenced by Frank Crosetti and John C. Schulte, to obtain the increased benefits from which their class had been excluded. By order of Judge Palmieri of the U. S. District Court for the Southern District of New York, dated October 5, 1965, that action was adjudged settled by giving approximately 22.378% of the

variable retirement benefits to the plaintiff class, which settlement amounted to approximately $750,000.

By agreement dated January 1, 1967 (effective April 1, 1967 and ending March 31, 1969) among representatives of both leagues and Marvin J. Miller and James Bunning and Richard Hall representing intervening defendant, Major League Baseball Players Association, the lump sum of $4,100,000 per year for 1967 and 1968 was substituted for the former 60% arrangement as the means of financing the Pension Plan and the class to which the plaintiff belongs (players not active after the 1957 season) was eliminated as a recipient of the increased benefits. Inasmuch as the sum payable to the Pension Fund under the previous agreement was approximately $2,600,000 per year and the 1967 agreement provided for $4,100,000 per year, there was a very substantial increase in benefits to those members of the Plan who were declared eligible to participate in them. For instance, under the previous agreement, the greatest benefit for a twenty year man was $723.25 a month. Under the 1967 agreement it was $1,487.95 per month.

In spite of the fact that the 1967 agreement clearly violates the concededly made oral agreement of 1954 that all players should share equally in all future increases and pension benefits, plaintiffs' complaint was dismissed by summary judgment. The two main grounds relied upon for this result are (1) that the Parol Evidence Rule bars the oral agreement because it is inconsistent with the terms of the March 12, 1954 memorandum and the October 1, 1954 agreements (Appendix "B", page B7) and (2) the oral agreement is unenforceable under New York General Obligations Law, Section 5-701 (1) (Statute of Frauds) since it could not be performed within a year from its making and no note or memorandum subscribed by the parties to be charged or by their agents exists (Appendix "B", page B8).

Reason for Granting Writ as to Question 1

The Court of Appeals for the Second Circuit has decided an important State question in a way in conflict with the applicable New York law.

At page B14 of Appendix "B", Judge Herlands in effect holds that writings evidencing the oral agreement, subscribed by the parties or their agents, but dated subsequent to the oral agreement, are of no significance with respect to the enforceability of such agreement.

The writings here referred to are (1) a letter from Hank Greenberg, one of the owner representatives who negotiated the 1954 agreement, to Mr. Ben Fiery and (2) notices sent out by the Pension Committee's agent, Retirement Plans, Inc.

The letter signed by Mr. Greenberg, dated May 3, 1962, one of the two owner representatives who negotiated the 1954 agreement, is contained in an exchange of correspondence between him and Mr. Ben Fiery, attorney for the owners. This correspondence is annexed hereto as Appendix "G", beginning at page G1.

Mr. Greenberg stated:

> "It was unanimously agreed that any change in the benefits would be borne by all members of the Plan. I do not recall that there was any need or desire on anyone's part, to incorporate this particular thought into the written agreement, but if my memory serves me correctly, there was a unanimous tacit agreement among all those present" (Appendix G, page G4).

The written statements of Retirement Plans, Inc. made in 1955 are part of reports which are set forth as Appendix "H". Typical is the following:

"Increase in Benefits"

"Increase in the benefits which came about because of the change in the Plan will be provided for all present members of the Plan, active, inactive and retired".

The applicable New York law with which the holding of the Court of Appeals is in direct conflict, is found in two leading cases: *Crabtree v. Elizabeth Arden Sales Corp.*, 305 N. Y. 48 (1953) and *Marks v. Cowdin*, 226 N. Y. 138 (1919).

In the *Crabtree* case, 305 N. Y. 48, which involved an oral agreement of employment for a number of years, the only writings were two payroll cards in the files of the defendant's payroll department, which cards had been initialed or signed by the defendant's General Manager or Comptroller. Judge Fuld writing for a unanimous Court stated at page 53:

> "That they were not prepared or signed with the intention of evidencing the contract, or that they came into existence subsequent to its execution, is of no consequence . . . (citing cases)."

He further stated at page 54:

> "The statute of frauds does not require the 'memorandum . . .' to be in one document. It may be pieced together out of separate writings, connected with one another either expressly or by the internal evidence of subject-matter and occasion.' Marks v. Cowdin, 226 N. Y. 138, 145; see, also, 2 Williston, op. cit., p. 1671; Restatement Contracts, § 208, subd. [a.]"

and again at page 55:

> "The statute is not pressed 'to the extreme of a literal and rigid logic', Marks v. Cowdin, 226 N. Y.

138, 144, and oral testimony is admitted to show the connection between the documents and to establish the acquiescence, of the party to be charged, to the contents of the one unsigned. See Beckwith v. Talbot, 95 U. S. 289; Oliver v. Hunting, 44 Ch. D. 205; see, also, 2 Corbin, op. cit. §§512-518; cf. Restatement, Contracts, §208, subd. [b], par. [iii].

". . . this court has on a number of occasions approved the rule, and we now definitively adopt it, permitting the signed and unsigned writings to be read together, provided that they clearly refer to the same subject matter or transaction. See, e.g., Peabody v. Speyers, 56 N. Y. 230; Raubitschek v. Blank, 80 N. Y. 478; Peck v. Vandemark, 99 N. Y. 29; Coe v. Tough, 116 N. Y. 273; Delaware Mills v. Carpenter Bros., 235 N. Y. 537, affirming 200 App. Div. 324."

In the *Marks* case, 226 N. Y. 138, Judge Cardozo wrote at page 145:

"The memorandum exacted by the statute does not have to be in one document. It may be pieced together out of separate writings, connected with one another either expressly or by the internal evidence of subject-matter and occasion (citing many cases). It is not even necessary that they be writings from the promisor or to the promisee. They may be from the promisor to his own agent."

Judge Herlands' determination therefore, with respect to these important writings, which was affirmed by the Court of Appeals on his opinion, is thus clearly in conflict with the law of the State of New York as enunciated by its highest Court.

Reason for Granting Writ as to Question 2

Judge Herlands' decision (Appendix "B", p. B7) that the agreements of October 1, 1954 are "a final integration" of all former agreements, is likewise in conflict with the applicable New York law. The authorities relied on by Judge Herlands for his determination in this regard are *Mitchill* v. *Lath*, 247 N. Y. 377 and *Fogelson* v. *Rackfay*, 300 N. Y. 334. Both these cases were decided after trial, not on motion for summary judgment.

In the *Mitchill* case, the first test stated for admissibility of the oral agreement is that it should be in form a collateral one. Obviously, an agreement that all future increases in pension benefits should be shared by all players is in form collateral to and not inconsistent with any of the statements in the March 12, 1954 memorandum or the October 1, 1954 agreements.

The second requirement of the *Mitchill* case is that the oral agreements must not be contradicted by express or implied provisions of the written agreements. Judge Herlands found such contradiction in the provisions of the written agreements to the effect that the Pension Committee should have complete charge of the administration and operation of the plan. But why does the power to administer and operate necessarily include the power to destroy? For example, could it be argued that the Pension Committee under this grant of power, could completely eliminate pension coverage of inactive players even though vested? Obviously, not.

In the *Fogelson* case, 300 N. Y. 334, the Court was dealing with a full detailed written lease with twenty-five separate paragraphs and the lease nowhere mentioned the alleged oral agreement which the tenant claimed gave him the right to bus service to the subway. Significantly also, the lease contained a clause reciting that the instru-

ment embodied "the entire agreement between the parties". It also stated "all prior negotiations and agreements are merged herein". Judge Fuld at page 338 analyzed the Parol Evidence Rule as follows:

> "The rule, defining the limits of the contract to be construed, forbids proof of an oral agreement to add to or vary the writing. *It does not, however, apply where the written contract was not intended to embody the entire agreement between the parties.* In general, an oral agreement may be proved only if it is "not * * * so clearly connected with the principal transaction as to be part and parcel of it." Mitchill v. Lath, supra, 247 N. Y. 377, 381, 160 N. E. 646, 647; see, also, Ball v. Grady, supra, 267 N. Y. 470, 196 N. E. 402; Halloran v. N. & C. Contracting Co., 249 N. Y. 381, 164 N. E. 324; Thomas v. Scutt, supra, 127 N. Y. 133, 27 N. E. 961; Eighmie v. Taylor, 98 N. Y. 288; Wilson v. Deen, 74 N. Y. 531; Stoner v. Stehm, 200 Iowa 809, 202 N. W. 530; O'Malley v. Grady, 222 Mass. 202, 109 N. E. 829; Farr v. Wasatch Chemical Co., 105 Utah 272, 143 P. 2d 281, 151 A. L. R. 275. Decision in each case must, of course, turn upon the type of transaction involved, the scope of the written contract and the content of the oral agreement asserted. As this court expressed it, 'in the end, the court must find the limits of the integration as best it may by reading the writing in the light of surrounding circumstances and by determining whether or not the agreement was one which the parties would ordinarily be expected to embody in the writing.' Ball v. Grady, supra, 267 N. Y. 470, 472, 196 N. E. 402, 403."

It is precisely as to the guidelines set forth by Judge Fuld that the error of the court below is found, for there

must first be an inquiry as to whether the written contract was intended to embody the entire agreement between the parties; whether the oral agreement was collateral or merely part of the principal transaction covered by the contract; the type of transaction involved and its scope and whether there is any contradiction between the oral agreement and the written contract. In the instant case only on a trial of the action with witnesses to be heard and examined and cross-examined could these points be ascertained so that there could be a reasonable and accurate test of the admissibility of the parol evidence.

Similarly, in *Mitchill* v. *Lath*, 247 N. Y. 377 there had been a trial at special term of the action which concerned an oral agreement to remove an ice house from land which the plaintiff had purchased by written contract which did not mention the oral agreement. The court points out the precise and traditional matters included in the contract of sale of the land and concludes that it shows a "full and complete agreement setting forth in detail the obligations of each party. On reading it one could conclude that the reciprocal obligations of the parties were fully detailed. Nor would his opinion alter if he knew the surrounding circumstances" (247 N. Y. at p. 381). The court also pointed out that the line between competent admissible parol evidence and incompetent parol evidence may be very narrow and that citation of authorities may be of slight use since each represents the judgment of the court on the precise facts before it. Here too we see another argument showing the error in granting summary judgment in a case such as the present, where the surrounding circumstances, the intention of the parties and the meager Memorandum (the March 12, 1954) which has affected millions of dollars and hundreds of people must be evaluated carefully and fully. As the court said in *Mitchill* v. *Lath*, 247 N. Y. at page 382:

> "Where the line between the competent and the incompetent is narrow the citation of authorities is

of slight use. Each represents the judgment of the court on the precise facts before it. How closely bound to the contract in the supposed collateral agreement is the decisive factor in each case. But reference may be made to Johnson v. Oppenheim, 55 N. Y. 280, 292; Thomas v. Scutt, 127 N. Y. 133, 27 N. E. 961; Eighmie v. Taylor, 98 N. Y. 288; Stowell v. Greenwich Ins. Co., 163 N. Y. 298, 57 N. E. 480; Newburger v. American Surety Co., 242 N. Y. 134, 151 N. E. 155; Love v. Hamel, 59 App. Div. 360, 69 N. Y. S. 251; Daly v. Piza, 105 App. Div. 496, 94 N. Y. S. 154; Seitz v. Brewer's Refrigerating Co., 141 U. S. 510, 12 S. Ct. 46, 35 L. Ed. 837; American Locomotive Co. v. National Wholesale Grocery Co., Inc., 226 Mass. 314, 115 N. E. 404, L. R. A. 1917D, 1125; Doyle v. Dixon, 12 Allen (Mass.) 576."

As Wigmore states:

"To determine what the writing was intended to cover, the document alone will not suffice. What it was intended to cover cannot be known till we know what there was to cover. The question being whether certain subjects of negotiation were intended to be covered, we must compare the writing and the negotiations before we can determine whether they were in fact covered.'" Wigmore on Evidence (2d Ed.) 2430.

Reason for Granting Writ as to Question 3

The decision of the Court of Appeals of the Second Circuit in this matter is in conflict with that of the Court of Appeals of the Sixth Circuit on the same subject-matter.

It will be recalled that the memorandum of the agreement of February 16, 1954 (Appendix "D"), provided

that the Pension Committee, which was to be charged with the administration and operation of the new Pension Plan, should consist of two owners and two players *or former players* (page D1). However, in the executed memorandum of March 12, 1954 (Appendix "E"), the player members of the Committee had to be active players. This change was accepted by the players and their counsel in reliance on the oral agreement that all players, active, inactive and retired would share equally in all future increases in benefits. Petitioner contends and urged upon the Court of Appeals that since the inactive players had changed their position in reliance upon this agreement, the active players and their representatives were estopped to abandon the equal treatment promised.

In the case of *S. J. Groves & Sons Company* v. *Ohio Turnpike Com.*, 315 Fed. 2d 235 (1963), the Court of Appeals of the Sixth Circuit reversed an order granting summary judgment in a situation where this kind of equitable estoppel was involved. The Court said at page 237:

> "'This Court has on several occasions expressed the view that a trial judge should be slow in disposing of a case of any complexity on a motion for summary judgment, that while such a judgment wisely used is a praiseworthy and timesaving device, yet such prompt dispatch of judicial business is neither the sole nor the primary purpose for which courts have been established, and that a party should not be deprived of an adequate opportunity to fully develop his case by witnesses and a trial, when the issues involved make such procedure the appropriate one. Knapp v. Kinsey, 249 F. 2d 797, 801-803, C. A. 6th; Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F. 2d 425, 427, C. A. 6th; Begnaud v. White, 170 F. 2d 323, 327, C. A. 6th; Estepp v. Norfolk & W. Ry. Co., 192 F. 2d

889, C. A. 6th; Bellak v. United Home Life Ins. Co., 211 F. 2d 280, 283, C. A. 6th; Hoy v. Progress Pattern Co., 217 F. 2d 701, 704, C. A. 6th. See: Sartor v. Arkansas Gas Corp., 321 U. S. 620, 64 S. Ct. 724, 88 L. Ed. 967; White Motor Co. v. United States, 83 S. Ct. 696.

It is often the case that although the basic facts are not in dispute, the parties in good faith may nevertheless disagree about the inferences to be drawn from these facts, what the intention of the parties was as shown by the facts, or whether an estoppel or a waiver of certain rights admitted to exist should be drawn from such facts. Under such circumstances the case is not one to be decided by the Trial Judge on a motion for summary judgment. Bohn Aluminum & Brass Corp. v. Storm King Corp., supra, 303 F. 2d 425, 427, C. A. 6th; Begnaud v. White, supra, 170 F. 2d 323, 327, C. A. 6th; Cameron v. Vancouver Plywood Corp., 266 F. 2d 533, 539-540, C. A. 9th; Girard v. Gill, 264 F. 2d 695, 697, C. A. 4th; Stevens v. Howard D. Johnson Co., 181 F. 2d 390, 394, C. A. 4th; United States v. Kansas Gas & Electric Company, 287 F. 2d 601, C. A. 10th; Severson v. Fleck, 251 F. 2d 920, 923, C. A. 8th; Oil Trading Associates, Inc. v. Texas City Refining, Inc., 201 F. Supp. 846, S. D. N. Y. These principles are, in our opinion, applicable to the present case.

We are of the opinion that this case is one where a full inquiry into the facts under usual trial procedure is advisable to develop the facts for the purpose of clarifying the application of the law, and that it is not a case suitable for disposition through summary judgment procedure. Knapp v. Kinsey, supra, 249 F. 2d 797, 802-803, C. A. 6th;

> Bohn Aluminum & Brass Corp. v. Storm King Corp., supra, 303 F. 2d 425, 427, C. A. 6th; Stevens v. Howard D. Johnson Co., supra, 181 F. 2d 390, 394, C. A. 4th.
>
> The judgment of the District Court is set aside and the case remanded to that court for further proceeding consistent with the views expressed herein."

In the case at bar, however, both the Court of Appeals and Judge Herlands ignored this well established legal principle.

Reason for Granting Writ as to Question 4

With respect to the power of the Courts to supervise the disposition of trust funds, such as pension funds, the Court of Appeals in the instant case has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

Judge Herlands in effect held (Appendix "B", page B10) that with the broad powers granted to the Pension Committee there could be no effective restriction thereon. It is respectfully submitted that this holding is contrary to the overwhelming weight of authority.

In *Moore v. Postal Telegraph Co.* (24 S. E. 2d, 361), where a Pension Committee disallowed a pension claim, the Appeals Court said (24 S. E. 2d, at p. 364):

> "When the exercise of judgment and discretion is vested either by law or contract, in an individual or governing body, a reservation is implied that it must be exercised in good faith and reasonably."

In *Local 138 v. NLRB.* 321 F. 2d, 130 (1963—C. C. A. 2), the Court held that where the welfare fund of the union failed to cover non-union workers, this was an unlawful discrimination against them, since they had been

deprived of life, health and accident policies which had been given to union members.

To the same effect is *NLRB* v. *Local 138*, 293 F. 2d, 187 (1961—C. C. A. 2).

In *Siegel* v. *First Pennsylvania Bank Co., Trustee*, 201 F. Supp., 664 (1961), the Employes' Fund of the Food Fair stores was administered by five members constituting the Advisory Committee. Three members were appointed by Food Fair and two by the employes. The Fund was non-contributory, and the Advisory Committee had ruled that the plaintiff was no longer entitled to participation in it. Plaintiff sued to establish his rights in the Pension Plan and defendant-Trustee moved for summary judgment. Under the terms of the Plan it was provided "all decisions of the Committee as to the facts of any case and the meaning or intent of any of the provisions of the Plan, or of any rules and regulations and their application to any case, shall be final and conclusive" and it was further provided that no beneficiary under the Plan could have any interest in the assets unless so resolved by the Committee.

In denying defendant's motion for summary judgment, the Court said, 201 F. Supp. at p. 669:

> "The Company urges that the effect of the quoted sections is to bar review of the Committee's action. The cases do not support the view that such provisions must be construed as giving unlimited discretion to those administering employes' benefit plans. See cases cited at 42 A. L. R. 2d, 474."

Similarly in *Hurd* v. *Illinois Bell Tel. Co.*, 136 F. Supp. 125 (1955), where the Benefit Committee had ruled that Social Security benefits should be deducted from pensions in a non-contributory Plan, the Court refused to accept the defendant's "affirmative" defense that the Benefit Committee's decision was conclusive because the Plan gave the Committee authority to "determine conclusively

for all parties all questions arising in the administration of the Plan." The Court said, 136 F. Supp. at p. 154:

> ". . . courts generally do not look favorably upon provisions that give to one party to a contract the power to settle for itself any disputes arising under the agreement.
>
> "'The judicial mind is so strongly against the propriety of allowing one of the parties, or its especial representative, to be judge or arbitrator in its own case, that even a strained interpretation will be resorted to if necessary to avoid that result.' Railway Passenger & Freight Conductors' Mutual Aid & Benefit Association v. Robinson, 1893, 147 Ill. 138, 159-160, 35 N. E. 168, 176."

In *Forrish* v. *Kennedy*, 105 Atlantic, 2d, 67 (Pa. 1954), the Trustees had denied plaintiff a pension. In reversing the determination of the Trustees, the Court said, 105 Atlantic at p. 70:

> "Their reason for so doing is that by the terms of the trust they are clothed with unlimited discretion and even if they act outside the bounds of a reasonable judgment, they are beyond the reach of judicial inquiry so long as they act in a state of mind in which it was contemplated by the settlors that they would act.
>
> "While we cannot subscribe to appellants' argument that the words 'full authority' are synonymous with the terms absolute or unlimited discretion, even such terms do not give a trustee unfettered discretion in all instances. . . .
>
> ". . . a court of equity can always intervene to control such an unreasonable exercise of discretion. In Re Brown's Appeal, 345 Pa. 373, 379, 29 A. 2d 52, 55, we said that 'While a court cannot control the discretion conferred upon a trustee it may compel him to exercise it in good faith and

> within the bounds of a reasonable judgment, and it may also interpose where he fails to use his judgment at all because of a mistaken view, either of fact or law, as to the extent of his powers or duties. . . .'. See also Damiani v. Lobasco, 367 Pa. 1, 7, 79 A. 2d 268."

In *Russell* v. *Princeton Laboratories, Inc.*, 231 Atlantic, 2d, 800 (N. J. 1967), the indenture provided that the Committee was to have "complete control" of the administration of the Plan and the power to construe the Plan and to determine all questions arising thereunder. It was also provided:

> "The decision of the said Committee upon all matters within the scope of its authority shall be final."

The Supreme Court of New Jersey reversed the lower court's granting of summary judgment for the defendants and, instead, directed summary judgment for the plaintiff. The Court pointed out that members of the Advisory Committee had a dollar interest in their decision, since the sums which might have gone to plaintiff would be allocated among the remaining participating employees. The Court also stated, 231 Atlantic, 2d, p. 804:

> "We note, too, that there was no semblance of a hearing before the Committee and nothing to indicate upon what facts or thesis the Committee acted. This setting does not encourage judicial deference (citing cases)."

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Dated: New York, N. Y.,
August 28, 1970.

Respectfully submitted,

LEONARD M. MANDEL,
Attorney for Petitioner.

Appendix A, Opinion of United States Court of Appeals for the Second Circuit

Before:

HAYS, ANDERSON and FEINBERG,

Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York, William B. Herlands, *Judge*, granting appellees' motion for summary judgment.

Affirmed.

J. NORMAN LEWIS, New York, N. Y. (Nemeroff, Jelline, Danzig, Paley & Kaufman, New York, N. Y. of counsel); *for Plaintiff-Appellant.*

JOHN H. MORSE, New York, N. Y. (Cravath, Swaine & Moore, Edward O. Byrne, Jeffrey M. Bernback, New York, N. Y., of counsel), *for Defendants-Appellees.*

RICHARD M. MOSS, New York, N. Y., *for Intervening Defendant-Appellee.*

PER CURIAM:

We affirm on the basis of the late Judge Herlands' opinion in the district court, —— F. Supp. —— (S. D. N. Y. April 20, 1969).

Appendix B, Memorandum Opinion of District Court

HERLANDS, District Judge:

On February 25, 1969, this Court filed a Memorandum and Order denying plaintiff's motion for a preliminary injunction. The following constitute the Court's findings of fact and conclusions of law upon which the denial was based. Fed. R. Civ. P. 52(a):

FINDINGS OF FACT

1. Plaintiff is a citizen of Oklahoma, and brings this action on behalf of himself and all others within the class constituted by Judge Wyatt's Order, dated and filed November 4, 1968, other than those who have chosen to object and to be excluded from the class.

2. All of the defendants are citizens of states other than Oklahoma. The Major League Baseball Players' Pension Committee has its principal place of business in New York.

3. Defendants Galbreath, Griffith, Bunning, and Hall are presently (or were) members of the Major League Baseball Players' Pension Committee; and defendant Segar is the Administrator of that Committee.

4. On December 14, 1953, John W. Galbreath and "Hank" Greenberg, appointed by the two Major Leagues to study and report "upon the procedure for and effect of terminating the Major League Baseball Players Annuity and Insurance Plan," met with Ralph Kiner, Allie Reynolds (plaintiff herein), and J. Norman Lewis (one of plaintiff's counsel herein), representing the players.

in Cleveland, to discuss the players' demands (presented to the Major League Executive Council on September 28, 1953), regarding a new pension plan.

5. Greenberg drew up a memorandum of that meeting wherein he summarized the players' demands and made various recommendations. This report was not approved or disapproved by the players' representatives present at the meeting. Galbreath and Greenberg presented this memorandum to each league on January 30, 1954. At separate meetings, on that date, the report was reviewed and each league, independently, gave Greenberg and Galbreath a vote of confidence, and apparently authorized them to conduct further discussions and negotiations, without authority to conclude any final agreement, however.

6. Galbreath, Greenberg, Reynolds, Kiner, and Lewis met again on February 16, 1954 in New York. During the course of this meeting some discussion was had regarding the manner in which the new pension plan would be administered. It was understood, as a general principle, that the pension committee to be established would administer the plan so as to grant all members of the plan equal rights regarding any increased benefits.

7. A joint memorandum of recommended key terms was agreed upon, as well as a publicity release. The memorandum, however, contained no mention of the method of administration described in paragraph 6 above. This memorandum was to be submitted by each of the two sides of their principals (the two Major Leagues and the Major League Baseball Player-Representatives) for study and final approval. None of the parties to the February

16, 1954 meeting had any authority to bind their principals to any particular agreement. Points 4 and 5 of this memorandum state that "appropriate written agreements" and "such contracts as may be necessary to effectuate" the substance of the terms agreed to by the negotiators, were to be drawn up.

8. A memorandum entitled "*Baseball Players Pension Plan*," dated March 12, 1954, was prepared by the attorneys for the Major Leagues, and approved by the leagues on March 12, 1954. Clause "B" of this memorandum provided that extension of the pension plan then in existence would be made for a period of five years. Clause "H" provided that such contracts as are necessary to establish the Pension Fund shall be prepared.

9. The sixteen player-representatives (one for each Major League Baseball Club) met in Cleveland on April 11, 1954 and approved the terms of the March 12, 1954 memorandum, adding, however, a sentence reading: "It is the intention of the Club Owners and the Players that a Pension Plan will be continued after 1961." The leagues agreed to this modification.

10. Lawyers for the two leagues prepared two formal contracts, each of which incorporated the terms of the memorandum of March 12, 1954, as modified. These were submitted to Lewis, who sent copies to the sixteen player-representatives. Approval was given to the formal contracts by the player-representatives on September 27, 1954 in New York and formally signed by Reynolds and Kiner on their behalf, and by Galbreath and Greenberg on behalf of the leagues.

Appendix B

14. The formal agreements referred to in paragraph 10 above established a Pension Committee which was given authority to:

> ". . . study and determine what modifications and amendments should be made in the Present Plan, including the type of plan, rights, benefits and costs. For such purposes the Committee shall have the right to employ lawyers, accountants, and actuaries to advise and assist the Pension Committee and its members. The Pension Committee shall have full and complete charge of the administration and operation of such Pension Plan and the Pension Fund provided for in Paragraph D hereof." Exhibit A to Agreements of October 1, 1954, Paragraph C.

Paragraph B of this exhibit (Memorandum of March 12, 1954, as modified, ¶ B) provided that the Pension Plan then in existence was extended for a period of five years, "under a program providing for such modifications and changes in the present Plan as may be determined to be financially feasible."

12. It was the obvious intention of the signatories to these agreements and of their principals that complete administration of the Plan (including power to implement the understanding reached on February 16, 1954) was to be vested in the Pension Committee, with full power of modification.

13. Soon after October 1, 1954, the Pension Committee was constituted, and, in accordance with its authority, engaged Retirement Plans, Inc. as the actuary consultants for Pension Plan. The Pension Committee agreed that all increases in benefits under the plan were to be given equally

to active, inactive and retired members. Retirement Plans, Inc. prepared a non-technical report of the features of the plan as agreed upon by the Pension Committee, and sent a copy to each member. This report stated that the Pension Committee decided: "(a) that all participants in the plan—both active, inactive and retired—would be treated alike insofar as any increase in retirement benefits is concerned." Exhibit A-4, p. 2; Affidavit of J. Norman Lewis, sworn to January 13, 1969.

14. A meeting of the Pension Committee took place in Miami Beach, Florida on February 18, 1961. There was discussion of possible changes in the plan, as of April 1, 1962 when a revised plan would become operative. The player members of the Committee noted their intention to seek additional benefits during the course of negotiations for a new agreement which would be made available to all members of the Plan who were active players on, or after, April 1, 1952.

15. A new agreement, dated July 10, 1961, was entered into by Galbreath and Frank C. Lane (representing the Major Leagues) and "Bob" Friend and "Gene" Woodling (representing the Major League Baseball Player-Representatives). This agreement was to be effective April 1, 1962, and by its terms would supersede and cancel the agreement dated October 1, 1954 and memorandum dated March 12, 1954. Paragraph 2 of this agreement provided that the Pension Plan would be continued for a five-year period ending March 31, 1967. Paragraph 4 enumerated the powers and duties of the Pension Committee. Subparagraph 4(a) entrusted "full and complete charge of the administration and operation of the Plan and of the Pension Fund" in the Pension Committee. Subparagraph

4(o) granted the Pension Committee the power to amend the Plan at any time, by unanimous vote, subject to the provisions that the contributions obligation of the Major League Baseball Clubs could not be changed.

16. The Pension Committee adopted, effective April 1, 1962, the proposal of the player members to increase certain benefits under the Plan, and granted these increased benefits to all members of the Plan who had active service in the Major Leagues on or after April 1, 1952.

17. An agreement dated January 1, 1967 (effective April 1, 1967 and ending March 31, 1969) was entered into by Galbreath and L. S. MacPhail, Jr., representing the leagues and Marvin J. Miller, James Bunning, and Richard Hall representing intervening defendant Major League Baseball Players Association. Subparagraph 5(b)(1) explicitly provides that the Major League Baseball Clubs would contribute $4,100,000 each year to the Pension Fund, arrived at by taking into consideration the funding formula of the July 10, 1961 agreement. "However, it is recognized that the parties hereto have no legal obligation to take such prior formula into consideration in determining the Club's contributions to the Pension Fund." Subparagraph 4(a) of this agreement provides that the Pension Committee "shall have full and complete charge of the administration and operation of the Plan and of the Pension Fund. . . ."

18. The Major League Baseball Players' Benefit Plan was amended by the signatories to the agreement described in paragraph 17 above, as of April 1, 1967. The Plan classified members into three classes. All plaintiffs in this action are within Class II, as set forth in section 7.1 of the Plan. The various subdivisions of section 7, there-

after provide the benefits payable to plaintiffs upon retirement.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of this cause by virtue of 28 U. S. C. § 1332 (1964).

2. The discussion and understanding of February 16, 1954 with respect to according all players—whether active, inactive or retired—equal treatment respecting any future increase in benefits did not give rise to an enforceable right.

3. The formal agreements of October 1, 1954 and the memorandum of March 12, 1954, incorporated therein by reference, do not contain any provision granting such right as asserted here by plaintiffs; and these agreements represent a final integration, thereby merging all of the prior negotiations, writings, oral representations and agreements into these written agreements. *See Fogelson v. Rockfay Construction Co.*, 300 N. Y. 334, 90 N. E. 2d 881 (1950). The putative right is not collateral to the October 1, 1954 agreements because they unqualifiedly grant full authority to the Pension Committee to administer the Pension Plan; and any restriction on its authority—such as the right claimed by plaintiffs—would, at least impliedly, be inconsistent with this contract term and thus be barred by the parol evidence rule, *e.g.*, *Mitchell v. Lath*, 247 N. Y. 377, 380-381, 160 N. E. 646, 647 (1928), any pre-existing intention to the contrary notwithstanding. *E.g.*, *Rola Realty Co. v. Spiegelman*, 24 App. Div. 2d 612, 262 N. Y. S. 2d 267 (1965).

4. No perpetual right to equality of treatment between inactive and active players arose from these agreements

by implication or otherwise for the reason that the agreements were, by their terms, for a period of five years only, and were not binding thereafter.

5. If the discussions of February 16, 1954 did contain the essentials for a binding agreement between the principals, providing for a right in plaintiffs to share equally in all future increases, no matter how or when obtained, such an agreement is void and unenforceable, for it could not be performed within one year of the making thereof nor would its performance be completed before the end of a lifetime, and thus would be barred by the statute of frauds. N. Y. Gen'l Obligations Law 5-701(4) (McKinney ed. 1964). No note or memorandum subscribed by the parties to be charged (or their duly authorized agents) exists.

6. The reports sent to the players by Retirement Plans, Inc. were mere summaries of the decisions of the Pension Committee regarding the method of administration of the Pension Plan during the five year period April 1, 1957—March 31, 1962. These decisions were intended to be, and could be, effective only for the period of time that the Pension Plan and Pension Committee were to be in existence, and thus no rights as to increases after March 31, 1962, vested.

7. The agreement of July 10, 1961 expressly superseded and cancelled the agreements of October 1, 1954. While, in terms, it "continued" the Pension Plan and Pension Committee, in legal contemplation the agreement only established the Plan and Committee anew.

Any rights to future benefits which plaintiffs here assert under the October 1, 1954 agreements or arising

from action taken by the Pension Committee were extinguished by both the expiration of the October 1, 1954 agreements and the express cancellation contained in the July 10, 1961 agreements. Plaintiffs' right to increased benefits under the 1961 agreement arose only from the action of the Pension Committee, taken pursuant to authority granted in that agreement, and not from any prior agreement or action. Plaintiffs' right to increased benefits under the 1961 agreement, arising from the action of the Pension Committee, did not and could not extend beyond the March 31, 1967 expiration date of that agreement.

8. The agreements of October 1, 1954 and that of July 10, 1961—providing for a contribution by the Club Owners of 60% of the gate receipts, radio and television proceeds of the All Star Game and 60% of the World Series' radio and television proceeds—create an enforcement right regarding that obligation only for the life of these agreements. There is nothing implicit in the agreements, taken as a whole, that warrants the conclusion that the 60% formula was to be adhered to perpetually. Any express oral agreement that the 60% formula was to be operative for a period after the expiration of the October 1, 1954 agreements or that of July 10, 1961 is unenforceable by virtue of the parol evidence rule, because such an agreement would be, at least implicitly, inconsistent with the five year term of these agreements. It would also be unenforceable under N. Y. Gen'l Obligations Law 5-701(1) (McKinney ed. 1964).

9. Neither the agreement of April 1, 1967 nor the operative provisions of the Pension Plan, as amended

(effective April 1, 1967) and approved by the leagues and intervening defendant Major League Baseball Players Association established any right in plaintiffs to share equally in the increased benefits. The action of the Pension Committee in restricting the increased benefits to those players active during and after the 1957 Major League Baseball season, was within their authority under the April 1, 1967 agreements, and not in violation of any other enforceable contract right.

10. In the absence of an enforceable contract right to increased pension benefits, there is no judicial authority to create, for former employees, an equitable right to share, forever, in increases won by present employees in the course of collective bargaining. *Sessions* v. *Southern California Edison Co.*, 47 Cal. App. 2d 611, 118 P. 2d 935 (1941). The action of the Pension Committee—granting greater benefits to one class of players, and not another—was lawful and cannot be altered by judicial fiat. *See Sessions* v. *Southern California Edison Co.*, *supra*; *cf. Schneider* v. *McKesson & Robbins, Inc.*, 254 F. 2d 827 (2d Cir. 1958); *Bailey* v. *Rockwell Spring & Axle Co.*, 13 Misc. 2d 29, 175 N. Y. S. 2d 104 (1958).

Nor is there judicial warrant, based in equity, to alter the terms of the April 1, 1967 agreement respecting the contribution obligations of the Club Owners. Though a contract term may be improvident in nature, if unambiguous and not the result of coercion or duress, it must be given effect as written. "It is the function of courts . . . to construe and enforce agreements, not to remake them." *Strong* v. *Reeves*, 280 App. Div. 301, 304, 114 N. Y. S. 2d 97, 100 (1952), aff'd, 306 N. Y. 666, 116 N. E. 2d 497 (1953).

In view of the foregoing findings of fact and conclusions of law, plaintiffs have failed to prove a probability of success upon the merits. Accordingly, the Court will not issue a preliminary injunction. *E.g., Garland* v. *Ruskin*, 249 F. Supp. 977 (S. D. N. Y. 1965); *Nadya Inc.* v. *Majestic Metal Specialties, Inc.*, 127 F. Supp. 467 (S. D. N. Y. 1954). *See Blaich* v. *National Football League*, 212 F. Supp. 319 (S. D. N. Y. 1962).

Motion for preliminary injunction denied. So ordered.

II.

Defendants Bunning, Hall, and Segar (the only defendants served with process) have cross-moved for summary judgment, pursuant to Fed. R. Civ. P. 56(b), to dismiss the action on the grounds that there are no genuine issues of material fact, and that, as a matter of law, defendants are entitled to judgment. For the reasons stated hereafter, the Court hereby grants defendants' cross-motion in all respects.

The complaint alleges that "[i]t was agreed, and so represented to the said active, inactive, and retired Major League baseball players that all members of the new Plan would share equally in any increased benefits which might result in the future in the course of the operation of the new Plan." (¶ 11).

The complaint also intimates that the Major League Baseball Players had a right to 60% of the proceeds of the All Star Game and 60% of the World Series' radio and television proceeds, which the Clubs, "through their leadership and control of the Pension Committee," sought, with success, to eliminate. (¶ 21(a)). Paragraph 21(h)

of the complaint compounds the obscurity by alleging vaguely that the owners combined to effect the objective of compelling the Pension Committee "[t]o accept a flat sum for the Pension Plan for the Period commencing March 1967 instead of the 60-40 arrangement referred to in (a), and attempting to usurp to themselves the ownership of funds received from the sale of radio and television rights to the World Series and All-Star Game, which rights have historically belonged to the players and their Pension Fund." This presumably refers to the provision in the April 1, 1967 agreement which substituted a lump sum contribution to the Pension Fund in place of the 60% formula in effect prior thereto.

Reynolds' answers to defendants' interrogatories disclose that the agreement and representations giving rise to the asserted rights claimed to have been violated were the oral agreement of February 16, 1954; the press release of February 16, 1954 and the memorandum of that date; the written memorandum of March 12, 1954; the written agreement [sic] dated October 1, 1954; the various oral representations made to the Major League players between December, 1955 and July, 1956 by representatives of Retirement Plans, Inc.; and the written reports sent to all members of the Plan by Retirement Plans, Inc. (Plaintiff's Answers to Interrogatories, ¶¶3d.(3)(B), 6(b)-(6)(f); Supplemental Answers to Interrogatories of Defendants Bunning and Hall, ¶4.(b)).

Thus, the two primary claims that appear to surface from the muddled complaint are that the agreement of April 1, 1967 (1) resulted in a violation of plaintiffs' right to share in all future increases in pension benefits on an equal basis with all other members of the Plan, whether active or inactive; and (2) constituted a breach of the Pension Committee's obligation to require the Club

Owners to contribute, in perpetuity, 60% of the All Star Game proceeds and 60% of the radio and television proceeds of the World's Series to the Players' Pension Fund.

With respect to the first of these contentions, it is not disputed that neither the press releases of February 16, 1954, the memorandum of February 16, 1954, the written memorandum of March 12, 1954, nor the agreements of October 1, 1954 contains any provisions expressly granting or giving rise to the asserted right of plaintiffs' class to share equally in all future increases in pension benefits. Plaintiffs claim that this right arose from the oral agreement of February 16, 1954 and was recorded in the written reports of Retirement Plans, Inc. This writing, plaintiffs submit, meets the note or memorandum requirement of N. Y. Gen'l Obligations Law § 5-701 (McKinney ed. 1964). However, even if plaintiffs' factual account of the February 16, 1954 meeting ('3d. (3)(B) Answers to Interrogatories) be fully accepted, any agreement reached at that time (assuming even that both parties had actual authority to contract) would be unenforceable by virtue of the parol evidence rule.*

An agreement that all future benefit increases would be shared equally by all vested members of the Plan is a restriction on the authority of the Pension Committee "to study and determine what modifications and amendments should be made in the present [*i.e.* presently existing] Pension Plan," and a restriction on the grant to the Pension Committee of "full and complete charge of the administration and operation of such Pension Plan and the Pension Fund. . . ." Agreements of October 1, 1954, Exhibit A [Memorandum of March 12, 1954], 'C.

* The Court herein adopts, by reference, Conclusion of Law No. 3, *supra* Part I of this Opinion, where the leading relevant New York authorities are set forth.

Being such a restriction, the oral agreement is, at least implicitly, inconsistent with the absolute grant of authority contained in the formal written agreements—hence, not collateral—and is deemed merged into the formal agreement, and, consequently, cannot be a source of rights, duties, and obligations. *E.g., Mitchell* v. *Lath*, 247 N. Y. 377, 380-81, 160 N. E. 646, 647 (1928).

The agreements of October 1, 1954, are a final integration of all the prior negotiations and oral agreements, and thus inconsistent oral agreements are deemed extinguished. As such, the fact that they are evidenced by a writing of a date subsequent to the formal contract (*i.e.* the written reports circulated by Retirement Plans, Inc.) is of no significance with respect to their enforceability.

Plaintiffs have not urged upon this Court that the writings issued by Retirement Plans, Inc. independently constitute an enforceable agreement, or are to be interpreted as written, valid modifications of the formal agreements of October 1, 1954. As a matter of law, this Court concludes that no such effect can be attributed to these writtings for the reason that they are lacking in all of the essentials for an independent binding agreement. At best, they can be characterized as unilateral statements of intention or future administrative policy; and they do not give rise to enforcement rights in plaintiffs as possible third-party beneficiaries or otherwise.

Conclusions of Law Nos. 7, 9, 10, *supra* Part I of this Opinion, are applicable to the issue of the validity of plaintiffs' claim and are adopted herein by reference. These Conclusions of Law negate any other possible sources for the enforcement rights plaintiffs seek to assert vis-a-vis the discrimination against players inactive on or before April 1, 1957, contained in the April 1, 1967 amendments to the Pension Plan.

Appendix B

Because plaintiffs' claim is insufficient as a matter of law in view of the various documents and principles referred to above, there are no genuine issues of material fact regarding this claim; thus, summary judgment is appropriate.

With respect to plaintiffs' second contention regarding the asserted obligation to adhere to the 60% funding formula, it appears that plaintiffs admit that "no specific portion of the oral agreement or written memorandum of February 16, 1954, the written memorandum of March 12, 1954, or the agreement [sic] of October 1, 1954 imposes the obligation or duty referred to. . . ." Rather, "the existence of such obligation and duty is implicit in such agreements taken as a whole." (Supplemental Answers to Interrogatories of Defendants Bunning and Hall, ¶6).

The Court has already concluded that no such right can be inferred or implied from the written agreements and that any express oral agreement purporting to create such rights is unenforceable under the parol evidence rule and the statute of frauds. Conclusion of Law No. 8, *supra* Part I of this Opinion. Since, in the absence of a contract creating such right, the Court may not grant plaintiff relief on this issue, *see* Conclusion of Law No. 10, *supra* Part I of this Opinion, summary judgment for defendants, is appropriate.

Plaintiffs' attempt to support their contentions by charging that intervening defendant Major League Baseball Players Association has recognized that such rights exists and has admitted this publicly and through its conduct in the course of negotiations for a new agreement to be effective April 1, 1969. In addition to being unsupported by any competent and admissible evidence, these statements or actions are immaterial and irrelevant because the existence *vel non* of these rights is a question of law and is determined on the basis of legal principles.

The complaint contains other allegations of an ambiguous nature. (*See* ¶¶ 21, 22, 23, 25, 26, 29, 30-35). Neither plaintiffs nor defendants chose to discuss these allegations during oral argument or to refer to them in their affidavits and briefs. The Court, nevertheless, grants summary judgment for defendants because, even if those allegations be taken as factually true, they do not result in any legally recognizable injury to plaintiffs. The allegations assert generally that the Pension Committee is operating unfairly and without due regard for the interests of inactive players. Plaintiffs request this Court, *inter alia*, to revamp the operation of the Pension Plan and make-up of the Pension Committee (despite the unambiguous contractual agreements establishing the Plan and Committee in their present form and granting full authority of administration to the Pension Committee) Plaintiffs also request the Court to restrain the Club Owners—who were not named as defendants and who have not been joined as parties to this litigation—(1) from negotiating new radio and television contracts without the consent of the Committee and (2) from reducing the amount to be received, under these contracts for the All Star Game and World's Series in order to secure for the Owners other payments for other games in which the players and their Pension Fund do not share. (Complaint, p. 13, ¶ f). These allegations do not state a claim upon which plaintiffs are entitled to relief. *See* Conclusion of Law No. 10, *supra* Part I of this Opinion.

Cross-motion for summary judgment granted. So ordered.

Dated: New York, N. Y.
March 17, 1969.

WILLIAM B. HERLANDS
U. S. D. J.

Appendix C, Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighteenth day of May one thousand nine hundred and seventy.

Present: HON. PAUL R. HAYS,
HON. ROBERT P. ANDERSON,
HON. WILFRED FEINBERG,
Circuit Judges.

ALLIE REYNOLDS, on behalf of himself, and all other former and present Major League baseball players similarly situated,

Plaintiff-Appellant,

v.

JOHN W. GALBREATH, et al.,
Defendants-Appellees;

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Intervening-Defendant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the

Appendix C

Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. Daniel Fusaro,
Clerk

Enter

A. Daniel Fusaro,
Clerk

Filed Jun 24, 1970
US District Court
S. D. of N. Y.

by Vincent A. Carlin

Docketed as a Judgment #70,828 on June 25, 1970
at (illegible)

Appendix D. Memorandum of Committee's Agreement

At a meeting of Messrs. John J. Galbreath and Henry Greenberg, on behalf of the Major League Baseball Owners, and Ralph Kiner and Allie Reynolds and J. Norman Lewis, on behalf of the Major League Baseball Players, the following terms were agreed upon for recommendation by each of the respective groups to its respective principals—final decision on these points to be made only after approval of the respective principals:

1. There is to be a Committee of Four (4) men to have full and complete charge of the administration and operation of the Major League Baseball Players Pension Fund, this Committee to be composed of two owners-representatives and of two Major League Baseball Players or two former Major League Baseball Players, the Players Representatives on this Committee to be chosen by the majority vote of sixteen (16) Club Players Representatives of the Major Leagues.

2. The two Player-Representatives who are now permitted by baseball regulations to attend the meetings of the Baseball Executive Council, shall hereafter be entitled to attend all meetings of the Executive Council and shall be entitled to vote at such meetings on such questions or matters which shall affect players and club interests.

3. There will be a joint meeting of the sixteen (16) Player Representatives and of the sixteen (16) owners at least once a year for a discussion of common problems.

4. Appropriate written agreements will be drawn up and signed by Player-Representatives and by

Appendix D

Owners effectuating the allocation to the Major League Players Pension Fund of 60% of all income from the gate receipts of the following:

(a) The All Star Game

(b) The World Series, Television and Radio

(c) The All Star Game, Television and Radio

The players shall have no interest in the remainder of such proceeds.

5. The drawing up of such contracts as may be necessary to effectuate the foregoing shall be done by the lawyers for the Baseball Owners and the lawyers for the Player-Representatives. The legal fees for such lawyers to be paid out of the Central Fund.

6. There shall be a maximum of four (4) meetings of the sixteen (16) Player-Representatives in each calendar year; all reasonable expenses of transportation, lodging and meals to be paid out of the Central Fund; such meetings to be called on such dates and in such places as shall be chosen by the Player-Representatives and consistent with schedules arrangements. A fund of Ten Thousand Dollars ($10,000) shall be established, checks out of which must be signed by all of four (4) Player-Representatives in whose name this fund shall be banked. Withdrawals from this fund to be only for the foregoing purpose and no others.

The Owners Committee is agreeable to the payment of the aforesaid expenses, but have not yet agreed upon the payment into the bank account of this $10,000 for the said purpose.

Appendix E. Memorandum of March 12, 1954

BASEBALL PLAYERS PENSION PLAN

March 12, 1954

A. The Major League Baseball Players Annuity and Insurance Plan will be continued in its present form until the close of the 1956 season—providing the same benefits, and on the present basis of premium and annuity payments. It is contemplated that the annuity costs for past service under the Plan will be paid by the close of the fiscal year ending November 30, 1956. In the event the annuity costs for past service under the present Plan are fully paid by November 30, 1956, the Plan may be revised by the Pension Committee effective April 1, 1956.

B. The Pension Plan will be continued for an additional five (5) years beginning with the 1957 season, under a program providing for such modifications and changes in the present Plan as may be determined to be financially feasible.

C. A Pension Committee composed of one representative of each Major League, and one active player representative from each Major League, shall study and determine what modifications and amendments should be made in the present Pension Plan, including the type of plan, rights, benefits and costs. For such purposes the Committee shall have the right to employ lawyers, accountants, and actuaries to advise and assist the Pension Committee and its members. The Pension Committee shall have full and complete charge of the administration and operation of such Pension Plan and the Pension Fund provided for in paragraph D hereof. All expenses of the Committee in-

curred prior to November 30, 1956 shall be paid from the Major Leagues Central fund and all expenses of the Committee incurred after that date shall be paid from the Pension Fund as part of the administrative expenses of the Pension Committee.

D. *Baseball Players' Pension Fund.* During the five years, 1957 to 1961, inclusive, the Major League Clubs will allocate 60% of the proceeds from the All-Star Game (including gate receipts, radio and television) and 60% of the proceeds from radio and television rights to the World Series Games to a Pension Fund which shall be administered by the Pension Committee referred to in paragraph C, upon the following term and conditions:

1. Such 60% of proceeds shall be allocated and paid to the Pension Fund, provided a tax ruling of appropriate Federal tax authorities, in form satisfactory to the Pension Committee, shall be secured prior to any such payment to the Pension Fund.

2. The monies in the Pension Fund shall be expended primarily for payment of the costs of the Pension Plan, including annuity and insurance premiums or other costs for benefits payable under the Plan and the administrative expenses of the Pension Committee.

3. After payment of the pension costs and administrative expenses out of the 60% of proceeds allocated to the Pension Fund, any remainder shall be applied to one or more of the following purposes: (a) to The Professional Baseball Players of America or to other benevolent baseball purposes, or (b) to increasing the benefits under the Pension Plan, or

(c) increasing the players' pool under Major League Rule 45(b), as the Pension Committee shall determine.

4. No part of the Pension Fund shall be used to pay lawyers, accountants, actuaries or other persons, except those employed by the Pension Committee.

The remaining 40% of the proceeds of the All-Star Games (including gate receipts and proceeds of radio and television rights), and 40% of the proceeds from radio and television rights to the World Series Games, shall be retained by the Major League Clubs and utilized for such purposes as they shall determine.

For the purposes of this paragraph D, the terms "radio and television rights" shall be all inclusive and shall include pre-game and post-game broadcasts and telecasts.

E. Article 2, Section 1, of the Major League Agreement will be amended so as to provide:

The player representative of each League shall be entitled to attend all meetings of the Executive Council at which matters concerning the standard form of players' contracts, or its provisions or regulations, or the Players Pension Plan are acted upon, and each League player representative shall have the right to vote on such matters.

F. The Clubs of each League will meet with the player representative of each Club in that League once a year to discuss any matters of mutual interest between the Clubs and the players.

G. The player representatives of the sixteen (16) Major League Clubs, at their discretion, may meet four (4) times

a year. Such meetings will be called on such dates and in such places as shall be chosen by the player representatives, and shall not conflict with schedule arrangements. All reasonable expenses of transportation, lodging and meals of the player representatives in attending such meetings, shall be paid from the Pension Fund as a part of the administrative expenses of the Pension Committee.

H. The preparation of such contracts as may be necessary to provide for the creation of the Pension Committee and the agreement to establish the Pension Fund shall be done by the lawyers for the Baseball Clubs and the lawyers for the Player-Representatives. The legal fees for such lawyers shall be paid from the Major Leagues Central Fund.

(Note: The provisions of paragraph H are approved subject to the players advising Messrs. Galbreath and Greenberg as to the amount to be paid to the "lawyers for the player representatives", and such amount being accepted and approved by Messrs. Galbreath and Greenberg.)

Appendix F, Agreements Dated October 1, 1954

AGREEMENT

RE MAJOR LEAGUE BASEBALL PLAYERS' PENSION COMMITTEE

THIS AGREEMENT entered into this 1st day of October, 1954, and between JOHN GALBREATH, as Representative of the eight Clubs comprising the National League of Professional Base Ball Clubs, and HENRY GREENBERG, as Representative of the eight Clubs comprising the American League of Professional Baseball Clubs, Parties Of The First Part, and RALPH KINER, as Representative of the National League Players, and ALLIE REYNOLDS, as Representative of the American League Players, Parties Of The Second Part,

WITNESSETH THAT:

WHEREAS, the American League Clubs and the National League Clubs, at separate meetings held March 12, 1954, each approved a memorandum agreement relative to the Major League Baseball Players' Annuity and Insurance Plan and the representatives of the Players of each of the sixteen Major League Clubs, at a meeting held April 11, 1954, approved said memorandum with a modification to paragraph B thereof, and the Clubs subsequently accepted said modification, and said memorandum as modified is attached hereto marked "Exhibit A";

AND WHEREAS, the parties hereto desire to formalize the agreements contained in said memorandum attached hereto and marked "Exhibit A", and, more particularly, to establish the Pension Committee provided for in paragraph C thereof;

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

Appendix F

1. The memorandum attached hereto and marked "Exhibit A" is hereby approved and adopted, and the parties hereto agree to be bound by all of the terms and conditions thereof and to perform all of the duties and obligations provided therein.

2. The Pension Committee provided for in the memorandum attached marked "Exhibit A" is hereby established, which Committee shall be composed of one representative of each of the two Major Leagues and one active player representative from each of the two Major Leagues.

3. The method of selection and the term of office of each member of the Pension Committee shall be solely within the control and discretion of the party represented by such member, provided, however, that at all times during his term of office, each member shall meet the requirements of paragraph 2 as to eligibility for membership on the Pension Committee.

4. Any party represented by a member of the Pension Committee may in its discretion select an alternate member to serve in the place of the regular member if for any reason the regular member should be unable to attend any meeting of the Pension Committee. Any alternate member selected by a party must meet the requirements of paragraph 2 of the Agreement as to eligibility for membership on the Pension Committee.

5. The President of each Major League and the Player Representative of each Major League who is a member of the Executive Council of Baseball shall certify in writing to the Commissioner of Baseball the name of the person selected as a member of the Pension Committee and the name of the alter-

nate member, if any, to represent the Clubs or Players of each Major League as the case may be and any person whose name is so certified shall be entitled to act as a member or alternate member of the Pension Committee until such time as his successor is duly certified, but only so long as he meets the eligibility requirements contained in paragraph 2 hereof.

6. This Agreement is executed by the undersigned, acting solely in their respective representative capacities, and not in their individual capacities.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names all as of the day and year first above written.

(Signed) John W. Galbreath
JOHN GALBREATH, as Representative of the Eight Clubs comprising the National League of Professional Baseball Clubs

(Signed) Henry Greenberg
HENRY GREENBERG, as Representative of the Eight Clubs comprising the American League of Professional Baseball Clubs

PARTIES OF THE FIRST PART

(Signed) Ralph M. Kiner
RALPH KINER as Representative of the National League Players

(Signed) Allie Reynolds
ALLIE REYNOLDS, as Representative of the American League Players

PARTIES OF THE SECOND PART

Appendix F

Exhibit A

BASEBALL PLAYERS PENSION PLAN

March 12, 1954

A. The Major League Baseball Players Annuity and Insurance Plan will be continued in its present form until the close of the 1956 season providing the same benefits, and on the present basis of premium and annuity payments. It is contemplated that the annuity costs for past service under the Plan will be paid by the close of the fiscal year ending November 30, 1956. In the event the annuity costs for past service under the present Plan are fully paid by November 30, 1955, the Plan may be revised by the Pension Committee effective April 1, 1956.

B. The Pension Plan will be continued for an additional five (5) years, beginning with the 1957 season under a program providing for such modifications and changes in the present Plan as may be determined to be financially feasible. It is the intention of the Club Owners and the Players that a Pension Plan will be continued after 1961.

C. A Pension Committee composed of one representative of each Major League, and one active player representative from each Major League, shall study and determine what modifications and amendments should be made in the present Pension Plan, including the type of plan, rights, benefits and costs. For such purposes the Committee shall have the right to employ lawyers, accountants, and actuaries to advise and assist the Pension Committee and its members. The Pension Committee shall have full and complete

charge of the administration and operation of such Pension Plan and the Pension Fund provided for in Paragraph D hereof. All expenses of the Committee incurred prior to November 30, 1956 shall be paid from the Major Leagues Central fund and all expenses of the Committee incurred after that date shall be paid from the Pension Fund as part of the administrative expenses of the Pension Committee.

D. Baseball Players' Pension Fund. During the five years, 1957 to 1961, inclusive, the Major League Clubs will allocate 60% of the proceeds from the All-Star Game (including gate receipts, radio and television) and 60% of the proceeds from radio and television rights to the World Series Games to a Pension Fund which shall be administered by the Pension Committee referred to in Paragraph C, upon the following terms and conditions.

1. Such 60% of proceeds shall be allocated and paid to the Pension Fund, provided a tax ruling of appropriate Federal tax authorities, in form satisfactory to the Pension Committee, shall be secured prior to any such payment to the Pension Fund.

2. The monies in the Pension Fund shall be expended primarily for payment of the costs of the Pension Plan, including annuity and insurance premiums or other costs for benefits payable under the Plan and the administrative expenses of the Pension Committee.

3. After payment of the pension costs and the administrative expenses out of the 60% of proceeds allocated to the Pension Fund, any remainder

shall be applied to one or more of the following purposes: (a) to the Professional Baseball Players of America or to other benevolent baseball purposes, or (b) to increasing the benefits under the Pension Plan, or (c) increasing the players' pool under Major League Rule 45(b), as the Pension Committee shall determine.

4. No part of the Pension Fund shall be used to pay lawyers, accountants, actuaries or other persons, except those employed by the Pension Committee.

The remaining 40% of the proceeds of the All-Star Games (including gate receipts and proceeds of radio and television rights), and 40% of the proceeds from radio and television rights to the World Series Games, shall be retained by the Major League Clubs and utilized for such purposes as they shall determine.

For the purposes of this paragraph D, the terms "radio and television rights" shall be all inclusive and shall include pre-game and post-game broadcasts and telecasts.

E. Article 2, Section 1, of the Major League Agreement will be amended so as to provide:

The player representative of each League shall be entitled to attend all meetings of the Executive Council at which matters concerning the standard form of players' contracts, or its provisions or regulations, or the Players Pension Plan are acted upon, and each League player representative shall have the right to vote on such matters.

F. The Clubs of each League will meet with the player representative of each Club in that League once a

year to discuss any matters of mutual interest between the Clubs and the Players.

G. The player representatives of the sixteen (16) Major League Clubs, at their discretion, may meet four (4) times a year. Such meetings will be called on such dates and in such places as shall be chosen by the player representatives, and shall not conflict with schedule arrangements. All reasonable expenses of transportation, lodging and meals of the player representatives in attending such meetings, shall be paid from the Pension Fund as a part of the administrative expenses of the Pension Committee.

H. The preparation of such contracts as may be necessary to provide for the creation of the Pension Committee and the agreement to establish the Pension Fund shall be done by the lawyers for the Baseball Clubs and the lawyers for the Player-Representatives. The legal fees for such lawyers shall be paid from the Major Leagues Central Fund.

AGREEMENT

RE MAJOR LEAGUE BASEBALL PLAYERS' PENSION FUND

THIS AGREEMENT entered into this 1st day of October, 1954, by and between JOHN GALBREATH, as Representative of the eight Clubs comprising the National League of Professional Baseball Clubs, and HENRY GREENBERG, as Representative of the eight Clubs comprising the American League of Professional Baseball Clubs, Parties of the First Part, and RALPH KINER, as Representative of the National League Players, and ALLIE REYNOLDS, as Representative of the American League Players, Parties of the Second Part,

Appendix F

WITNESSETH THAT:

WHEREAS, the American League Clubs and the National League Clubs, at separate meetings held March 12, 1954, each approved a memorandum agreement relative to the Major League Baseball Players' Annuity and Insurance Plan and the representatives of the Players of each of the sixteen Major League Clubs, at a meeting held on April 11, 1954, approved said memorandum with a modification to Paragraph B thereof, and the Clubs subsequently accepted said modification, and said memorandum as modified is attached hereto marked "Exhibit A";

AND WHEREAS, the parties hereto desire to formalize the agreements contained in said memorandum attached hereto and marked "Exhibit A," and more particularly, to establish the Pension Fund provided for in paragraph D thereof;

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. The memorandum attached hereto and marked "Exhibit A" is hereby approved and adopted, and the parties hereto agree to be bound by all of the terms and conditions thereof and to perform all of the duties and obligations provided therein.

2. The Pension Fund provided for in the memorandum attached hereto marked "Exhibit A" shall be administered by the Pension Committee provided for in said memorandum, and an Agreement dated October 1, 1954, between the parties hereto, in accordance with the terms and provisions of the memorandum attached hereto marked "Exhibit A."

3. The Pension Fund shall be deposited and held as a separate fund with such depositary or depositaries as the Pension Committee shall designate.

4. This Agreement is executed by the undersigned, acting solely in their respective representative capacities, and not in their individual capacities.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names all as of the day and year first above written.

(Signed) John W. Galbreath
JOHN GALBREATH, as Representative of the Eight Clubs comprising the National League of Professional Baseball Clubs

(Signed) Henry Greenberg
HENRY GREENBERG, as Representative of the Eight Clubs comprising the American League of Professional Baseball Clubs

PARTIES OF THE FIRST PART

(Signed) Ralph M. Kiner
RALPH KINER, as Representative of the National League Players

(Signed) Allie Reynolds
ALLIE REYNOLDS, as Representative of the American League Players

PARTIES OF THE SECOND PART

Appendix G, Correspondence

(Letterhead of)

BAKER, HOSTETLER & PATTERSON
UNION COMMERCE BUILDING
Cleveland
14

April 23, 1962

Mr. Henry B. Greenberg
993 Park Avenue
New York 28, N. Y.

Dear Hank:

I am enclosing a copy of letter from J. Norman Lewis to John Galbreath dated March 16. From this you will note he is pressing the claim of Frank Crosetti and other retired members of the Pension Plan to obtain the increased benefits granted to active players under the recent amendment to the Pension Plan.

I particularly wish to call your attention to the second and third paragraphs of Lewis' letter which read as follows:

> "When the Major League Baseball Players' Benefit Plan was revised effective April 1, 1957, it was specifically agreed that increase in the benefits which came about because of the change in the Plan would be provided for all the members of the Plan, 'active, inactive and retired'. The inactive and retired players feel that they would be unjustly discriminated against if they were to be excluded from increased benefits under the Plan, which are to inure to active members.

> "You personally were largely instrumental in working out the advantageous solution of Pension Plan problems in 1953 and 1954. I am sure that it was the tent of you and of the other members of the bargaining group, i. e., Messrs. Greenburg, Kiner, Reynolds and myself, that all future benefits be extended equally to all members of the Plan, active, inactive or retired. Indeed up until now this has been the case."

As to the second paragraph, to my knowledge it was *not*

> "specifically agreed that increase in the benefits which came about because of the change in the Plan would be provided for all the members of the Plan, 'active, inactive and retired'."

I am writing to you to ascertain whether there was any understanding or agreement that increase in the benefits of the Plan would be provided for all members of the Plan.

Furthermore, you will note in the subsequent paragraph it is stated that it was the intent of the members of the Committee to extend all future benefits equally to all members. Is this correct?

I would appreciate it very much if you would let me have your comments on Mr. Lewis' letter to Mr. Galbreath.

With kindest personal regards and best wishes,

Cordially yours,

BEN

5:6c

Appendix G

May 3, 1962

Mr. Benjamin F. Fiery
Baker, Hostetler & Patterson
Union Commerce Building
Cleveland 14, Ohio

Dear Ben:

I am in receipt of your letter of April 23, 1962, and a copy of a letter from J. Norman Lewis to John Galbreath, dated March 16, 1962.

In reply, it is my recollection that the agreement between the members of the Pension Committee, both players and owners, during the time that we endeavored to resolve the problems of the Pension Plan that developed in 1953, coincided with the opinion of Mr. Lewis.

I recall that among the many perplexing problems that faced the Committee in those days was the establishing of certain ground rules among which were to determine those ball players who were eligible for pensions and those who were not. After this was decided, considerable discussion arose as to whether or not all members were entitled to equal benefits. At that time there was some thought on the part of the player representatives to give a more generous share to the current players at the expense of those players who had preceded them. You will recall, that the Plan was not guaranteed at that time because of insufficient funds, but in view of the likely prospects of increasing revenues from the World Series telecasts, as well as from the All-Star Games, it was argued that the players should be treated alike as long as they were members of good standing and were eligible.

It was also pointed out at that time that the future benefits should be shared on an equal basis.

As a matter of fact, I recall that much discussion was centered around the possibility of closed-circuit television which would immeasurably increase the fees of the World Series Games and All-Star Games and that there might be considerably more monies accruing. It was unanimously agreed that any change in the benefits would be borne by all members of the plan. I do not recall that there was any need or desire on anyone's part to incorporate this particular thought into the written agreement, but if my memory serves me correctly, there was a unanimous tacit agreement among all those present.

Since the signing of the Pension Plan Agreement in 1953, it has occurred to me that from time to time the new Pension Plan Committees have changed the spirit of the original agreement, and one of these changes is the recent elimination of inactive players from sharing in the increased benefits. It occurs to me that the present ball players are trying to establish a retirement benefit plan so that they will never have to work again after their playing days are over, rather than a Pension Plan that will supplement their income after they actively retire from the game.

I know that you are not soliciting my advice, but it occurs to me that the increase of monies that is coming into the current Baseball Pension Plan might be spread out to include a number of players who do not presently participate in the plan, because they have not served at least five years in the major leagues and are, therefore, not eligible. It seems to me that the five year rule could be lowered to four or three years in order to include a

number of players who were in the major leagues but perhaps not quite good enough to remain there. At least, in this instance we would be taking care of players who do not draw large salaries and might need the additional assistance that Baseball might have to offer them through the Pension Plan.

I trust this is the information you desire and if there are any further inquiries in which I can be helpful, please do not hesitate to contact me at my address in New York.

With every good wish to you, as always.

Sincerely,

HANK GREENBERG

HG:iv

Appendix H, Statements of Retirement Plans, Inc.

(Letterhead of)

RETIREMENT PLANS, INC.
Ohio

Cleveland 15 239 Hanna Building Phone Superior 1-7634

Major League Baseball Players Benefit Plan

A revised Major League Baseball Players Benefit Plan will go into effect April 1, 1957. The plan which was designed by the Pension Committee has been approved by all parties concerned. The Plan has now been submitted to the Internal Revenue Service for approval and it is anticipated that a ruling will be made as to its acceptability before April 1.

A booket is being prepared which will describe the plan in detail and which will contain a copy of the plan itself. Each member of the plan will receive a copy of the booklet when it is completed.

The following is an outline of the benefits provided by the Major League Baseball Players Benefit Plan.

Eligibility for Membership:

If you are a member in the present Plan you will continue to be a member in the new Plan commencing April 1, 1957. All other players, coaches and trainers will be eligible to become members after they have completed 60 days of service on a Major League Roster.

Vesting:

All members in the Plan who have completed 5 years of service on a roster will have a vested right

in the retirement benefits which they have accrued.

Increase in Benefits:

Increases in the benefits which come about because of the change in the Plan will be provided for all present members of the Plan, active, inactive and retired.

(Letterhead of)

RETIREMENT PLANS, INC.

SPECIAL REPORT

Major League Baseball Players Committee

On March 12, 1954, the American League Clubs and National League Clubs at separate meetings approved a memorandum agreement respective to the Major League Baseball Players Annuity and Insurance Plan. The memorandum provided that commencing with the 1957 season and continuing through the 1961 season, television money and certain gate receipts would be allocated by the clubs to fund the plan. In anticipation that the available money would be more than sufficient to continue the plan in its present form, this memorandum provided for designing a new plan with increased benefits.

The committee composed of one club representative from each league and one player representative from each

league engaged the firm of White & Case as counsel and the firm of Retirement Plans, Inc. as actuaries to assist it in its determinations.

The committee has held a series of meetings at which reports of the actuaries have been presented and exploration of the subject of pension planning has been pursued at great length.

As a result of these explorations, the following basic decisions were made:

(a) That all participants in the plan—both active, inactive and retired—would be treated alike insofar as any increase in retirement benefits is concerned;

(b) That service in excess of 10 years should be recognized in determining retirement benefits;

(c) That players should be encouraged to save by offering supplemental retirement benefits to those who chose to make supplemental contributions;

(d) That hospital and disability benefits are desirable.

SUPREME COURT, U. S.
FILED
OCT 2 1970
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 634

ALLIE REYNOLDS, ETC.,

Petitioner,

—against—

JAMES P. BUNNING, RICHARD HALL, CHARLES SEGAR and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS BUNNING, HALL AND SEGAR IN OPPOSITION

JOHN H. MORSE,
Attorney for Respondents Bunning, Hall and Segar
One Chase Manhattan Plaza,
New York, N. Y. 10005

EDWARD O. BYRNE,
Of Counsel.

October 2, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 634

ALLIE REYNOLDS, *etc.*,

Petitioner,

—against—

JAMES P. BUNNING, RICHARD HALL, CHARLES SEGAR and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS BUNNING, HALL AND SEGAR IN OPPOSITION

This Brief in opposition to Allie Reynolds' petition for a writ of certiorari is submitted on behalf of respondents Bunning, Hall and Segar, the only defendants served with process below.

Jurisdiction

This Court does not have jurisdiction because the petition was not filed within ninety days after entry of the judgment sought to be reviewed as required by 28 U. S. C. § 2101(c), and the petition should therefore be dismissed as untimely. The judgment of the Court of Appeals was entered on May 18, 1970, and Reynolds concedes that "no rehearing or extension of time to petition for certiorari

was sought". (B. 2.*) The petition, however, was not filed until September 2, 1970, 14 days too late to give this Court jurisdiction. *See Department of Banking* v. *Pink*, 317 U. S. 264 (1942); *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 418 (1923).

Reynolds erroneously asserts (B. 2) that the judgment was entered on June 25, 1970. That is the date it was docketed in the District Court. The judgment itself recites it was made at a stated term held "on the eighteenth day of May one thousand nine hundred and seventy" (B. at C1), and the notice to the parties from the Clerk of the Second Circuit (Appendix A to this Brief) states that "judgment has been entered today" and such notice is dated May 18, 1970. As stated in *Boylan* v. *United States*, 257 U. S. 614 (1921):

> "[The statutory period] began with the date of the entry of the final judgment of the Circuit Court of Appeals to which the writ of error issued, and not with date of the entry of the judgment in the District Court under the mandate of the Circuit Court of Appeals." *Ibid.*

Further Grounds for Dismissal of Petition

This petition should be dismissed because (1) the summary judgment decision affirmed by the Court of Appeals was predicated on independent grounds not challenged by Reynolds and (2) it seeks review of questions either not raised by the decisions below or not decided in conflict with applicable state law.

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*The following citation forms are used in this Brief: Reynolds' Brief—"B"; Appendix to Petitioners' Brief below—"A"; and Appendix B to this Brief—"App. B".

Statement

This is a common law action precipitated by amendments effective April 1, 1967, to the Major League Baseball Players Benefit Plan ("Benefit Plan") adopted pursuant to an agreement reached during collective bargaining between the Major League Baseball Players Association and the 20 Major League Clubs (A. 88a).

Those amendments provided, in part, that certain additional pension benefits would be payable upon retirement to those vested members of the Benefit Plan with any active service in the Major Leagues in the preceding 10 years and not already receiving their retirement benefits (A. 88a).

Reynolds, a former major league pitcher who quit playing in 1955, sued on behalf of a class of former baseball players who, like himself, would not be eligible for the additional pension benefits (A. 88a). No claim has been asserted that any person has been deprived of rights under the terms of the Benefit Plan as amended from time to time or the written contracts pursuant to which it has existed.

Reynolds' answers to interrogatories established that the sole basis (other than "general principles of equity") for the claimed right to receive the additional pension benefits was an alleged oral understanding made early in negotiations in 1954 between the club owners and the players involving modification of the pension plan established by the Major League clubs in 1947.* Those negotiations resulted in the signing of two formal written contracts dated October 1, 1954, in which the clubs agreed to fund, for a five-year period beginning in 1957, a new pension plan to be administered by an owner-player pension committee which was

*These interrogatories and Reynolds' answers are set forth in Appendix B to this Brief.

to "study and determine what modifications should be made" in the existing plan including determining "the type of plan, rights, benefits and costs." (B. at F4.) These formal contracts were signed by Reynolds as representative of the American League Players, by Ralph Kiner as representative of the National League Players and by John W. Galbreath and "Hank" Greenberg, as representatives of the National League and American League, respectively (B. at F3, F9). Reynolds, however, claims that an oral "side agreement" was entered into in New York on February 16, 1954, by these four persons on behalf of their respective principals to the effect that "all future increases in benefits would be shared equally by all vested members of the plan, whether active, inactive or retired" (App. B. at B5).

Respondents moved for summary judgment based on Reynolds' admissions, documents conceded as genuine, and facts uncontroverted by Reynolds set forth in the affidavits of "Hank" Greenberg and John W. Galbreath (App. 91a). The late District Judge Herlands granted the motion with respect to the oral agreement because it (i) did not give rise to an enforceable right, (ii) was barred by the New York parol evidence rule, (iii) was barred by the New York statute of frauds, and (iv) was superseded and canceled by a later written agreement dated July 10, 1961.**

By a judgment entered on May 18, 1970, the Second Circuit Court of Appeals affirmed on the basis of Judge Herlands' opinion.

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*Reynolds had earlier filed a Note of Issue asserting that he had finished his discovery and was in all respects ready for trial (A. 91a).

**Judge Herlands' opinion and an earlier decision of Judge Wyatt (from which no appeal was taken) disposed of other claims made by Reynolds not here involved.

ARGUMENT

I.

THIS PETITION SHOULD BE DISMISSED BECAUSE SUMMARY JUDGMENT WAS PREDICATED ON INDEPENDENT GROUNDS NOT QUESTIONED BY THE PETITION.

Reynolds questions only "the two main grounds relied on" by Judge Herlands (B. 7), not disputing his further holdings that (i) the oral agreement did not give rise to an enforceable right and (ii) a later contract expressly superseded and canceled whatever earlier agreements had been reached.

Reynolds conceded that none of the four negotiators had any power to bind the respective principals, the two Major Leagues and the players of the two Major Leagues, when the oral agreement he seeks to enforce was made* and does not claim that the oral agreement was ever submitted to or approved by those principals (App. B at B1-B5). Thus, Judge Herlands properly held that the oral agreement did not give rise to an enforceable right.

Further, on July 10, 1961, a new written agreement was entered into by the respective principals which continued the Benefit Plan for an additional five-year period and expressly superseded and canceled the earlier agreements (A. 79a-80a). Thus, as Judge Herlands held, any rights Reynolds had to benefit increases under the earlier agreements were extinguished.

Each such holding was a sufficient reason for the granting of summary judgment and, accordingly, this petition should be dismissed.

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*¶¶ 4, 5 and 8 of Defendants' Statement pursuant to Rule 9(g) of the General Rules of the Southern District.

II.

THE PETITION SEEKS TO REVIEW QUESTIONS EITHER DECIDED IN CONFORMITY WITH STATE LAW OR NOT RAISED BELOW.

A. The New York Statute of Frauds Was Correctly Applied.

Reynolds does not dispute that the New York statute of frauds* is applicable, but he asserts only that Judge Herlands' decision conflicts with New York cases because it held that "writings evidencing the oral agreement, subscribed by the parties or their agents, but dated subsequent to the oral agreement, are of no significance with respect to the enforceabilfty of such agreement" (B. 8).

Reynolds conveniently ignores that the subsequent writings—a notice circulated in 1956 by Retirement Plans, Inc., and a letter written in 1962 by "Hank" Greenberg—were not listed in his answer to interrogatories as writings evidencing the oral agreement. Further, Reynolds made no claim in the District Court that Greenberg's letter satisfied the statute. With respect to the Retirement Plans, Inc., notice before him, Judge Herlands held that it had no significance because it merely summarized certain decisions of the Pension Committee in adopting amendments effective April 1, 1957, which is a far cry from evidencing a contract that, forever in the future, whenever amendments are adopted increasing benefits, all vested members will share equally.

In any event, neither subsequent writing could possibly satisfy the New York statute of frauds which specifically requires the writing to be signed by "the party to be charged therewith or by his lawful agent", because Greenberg in 1962 and Retirement Plans, Inc., in 1957 were not the lawful agents of the parties sought to be charged by the 1954 oral

New York General Obligations Law § 5-701(1).

agreement—i.e., the National League, the American League, the National League Players and the American League Players. Further, *Crabtree* v. *Elizabeth Arden Sales Corp.*, 305 N. Y. 48, 110 N. E. 2d 551 (1953), held that it must be clear that the *parties to be bound* assented to the contents of a subsequent writing before such writing could satisfy the statute. Yet Reynolds at no time has disputed the statements of Mr. Greenberg and Mr. Galbreath that the two leagues never assented to any terms not in the formal written contracts dated October 1, 1954.

B. The New York Parol Evidence Rule Was Correctly Applied.

Reynolds argues that Judge Herlands' decision conflicts with the leading New York cases applying the parol evidence rule, *Mitchill* v. *Lath*, 247 N. Y. 377, 160 N. E. 2d 646 (1928), and *Fogelson* v. *Rackfay Const. Co.*, 300 N. Y. 334, 90 N. E. 2d 881 (1950), because the February 16 oral agreement was in form collateral to and was not inconsistent with the written agreements dated October 1, 1954.

An oral agreement to the effect that all benefits forever in the future must be granted equally to all vested members is in fact inconsistent with a written agreement limited to a five-year period and granting the Pension Committee power to determine the "type of plan, rights, benefits and costs", and Judge Herlands so held.

Moreover, Reynolds' argument utterly ignores the *third* condition set forth in *Mitchill* v. *Lath*, *i.e.*, the oral agreement must be not only collateral in form and not inconsistent with the written agreement but it also

> ". . . must be one that parties would not ordinarily be expected to embody in the writing; or put in another way, an inspection of the written contract, read in light of surrounding circumstances must not

> indicate that the writing appears 'to contain the engagements of the parties, and to define the object and measure the extent of such engagement.' Or again, *it must not be so clearly connected with the principal transaction as to be part and parcel of it.*" 247 N. Y. at 381, 160 N. E. at 647 (emphasis added).

In both *Mitchill* v. *Lath* and *Fogelson* v. *Rackfay Const. Co.* it was found at trial that the defendants had entered into collateral oral agreements which the plaintiffs had relied on in entering into the written agreement. Yet, the Court of Appeals *reversed in both cases and dismissed the complaints* because as a matter of law the subject matter of the oral contracts were sufficiently related to the written contracts to bar enforcement.

C. Reynolds' Question Number 3 is not Properly Before This Court.

The Court of Appeals quite properly ignored Reynolds' claim of "equitable estoppel" because the record below is devoid of any factual basis for a claim that any person relied on the alleged oral promise. Indeed, Reynolds said nothing of such a claim in answer to specific interrogatories which required him to set forth *all* claims being asserted in this action (e.g. App. B. at B1).

D. Courts Cannot Create Equitable Rights to Increased Pension Benefits.

Reynolds' Question 4 assumes the conclusion—the very issue before Judge Herlands was whether the oral "agreement to the contrary" was legally enforceable and a restriction on the Pension Committee.

Because the oral agreement is unenforceable, the issue below was whether former employees had any equitable

right to share in additional pension benefits granted to present employees. In the only cases which we have found involving this question, the courts have held that they do not. *See Hurd* v. *Illinois Bell Tel. Co.*, 136 F. Supp. 125, 150 (N. D. Ill. 1955), 234 F. 2d 942 (7th Cir.), *cert. denied sub. nom. Seybold* v. *Western Electric Co.*, 352 U. S. 918 (1956); *Sessions* v. *Southern California Edison Co.*, 118 P. 2d 935 (Cal. Ct. App. 1941). Thus, Judge Herlands properly dismissed this claim.

The cases cited by Reynolds involving union discrimination against nonunion employees are irrelevant. His class consists of former employees who ceased working more than ten years earlier. Further the cases cited by him holding that pension committees may not arbitrarily interpret the terms of pension plans are irrelevant. This action challenges the policy determination as to what those terms were to be, which was reached during collective bargaining between the employers, the 20 Major League clubs, and the Players Association, the bargaining representative of the present employers.

CONCLUSION

For the foregoing reasons, Reynolds' petition for a writ of certiorari should either be dismissed or denied.

October 2, 1970

Respectfully submitted,

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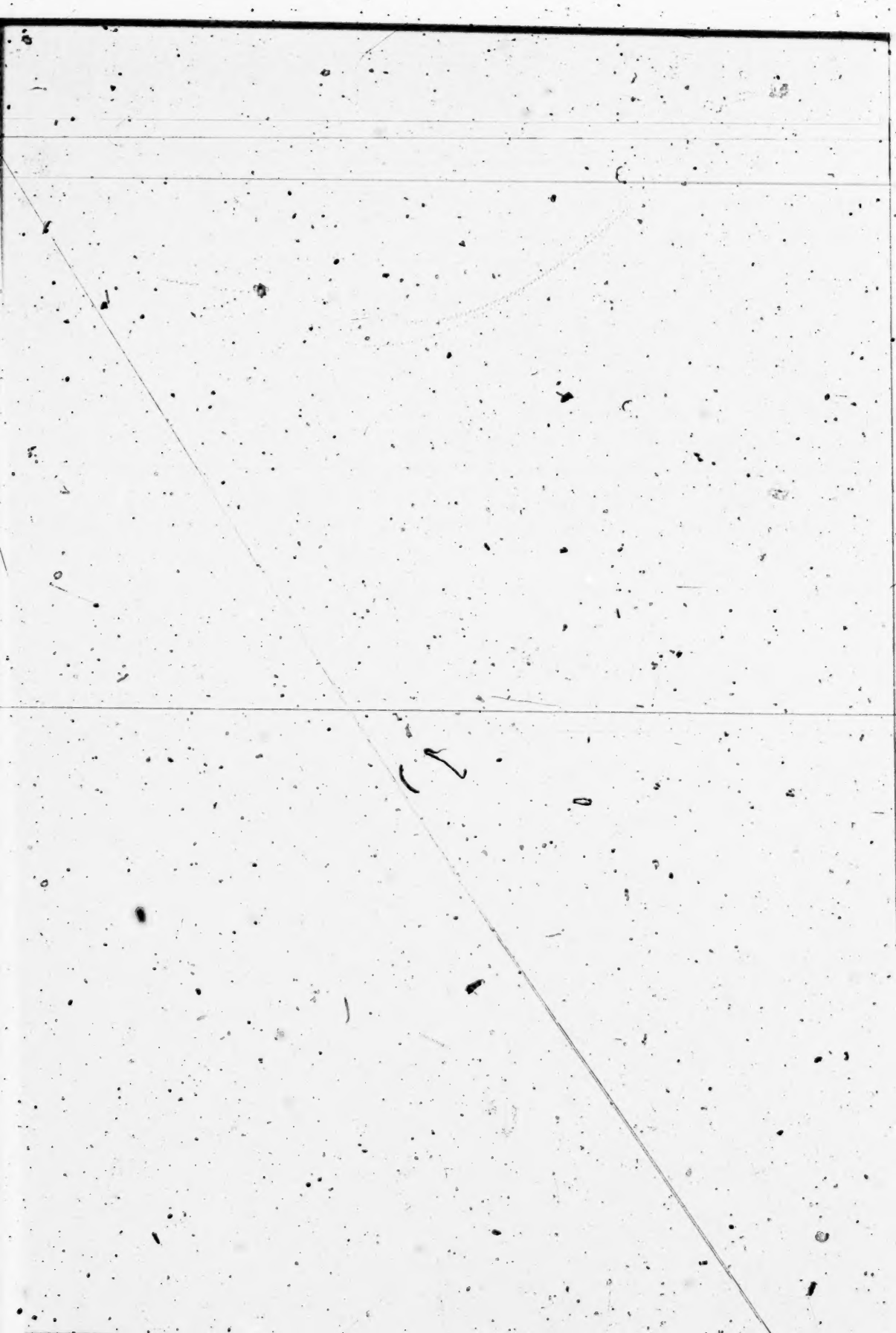
EDWARD O. BYRNE,
Of Counsel.



APPENDIX A

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
United States Courthouse
Foley Square
New York 10007

A. DANIEL FUSARO
Clerk

May 18, 1970

REYNOLDS, ETC. *vs.* GALBREATH, ET AL.	Docket # 34542

Dear Sirs:

The Court has today handed down a decision in the above entitled cause affirming the decision of the district court.

A copy of the opinion will be mailed to you tomorrow.

Additional copies of opinions may be obtained from this office in accordance with § 0.17(7) of the rules of this Court supplementing the Federal Rules of Appellate Procedure.

Judgement has been entered today and a mandate will issue in accordance with Rule 41 of the Federal Rules of Appellate Procedure.

Very truly yours,

A. DANIEL FUSARO
Clerk

APPENDIX B

INTERROGATORY NUMBER 13 OF DEFENDANTS BUNNING AND HALL.

13. With respect to paragraph 35 of the complaint, describe each and every right of the plaintiffs being whittled away, and state the source of each such right.

PLAINTIFF'S ANSWER TO INTERROGATORY NUMBER 13 OF DEFENDANTS BUNNING AND HALL.

13. The rights referred to are the rights of the inactive vested players to share equally with the active players in all increases and benefits and the rights of all players to share in the proceeds of World Series and All Star Games radio and television rights and/or gate receipts. The sources of such rights are the oral agreement dated February 16, 1954, the substance of which is set forth in plaintiff's answer to SEGAR Interrogatory 3d. (3)(B); on press release dated February 16, 1954 [A. 54a]; on memorandum attached thereto [A. 52a-53a], copies of which are annexed hereto; on written memorandum dated March 12, 1954, [A. 71a-74a] copy of which is annexed to plaintiff's answer to interrogatories of defendant SEGAR; and written agreement dated October 1, 1954, copy of which is likewise annexed thereto [A. 68a-70a]. The sources of such rights are also founded on general principles of equity.

INTERROGATORY NO. 4 OF DEFENDANTS BUNNING AND HALL.

4. With respect to yourself and each member of the class of persons that you purport to represent in this action who claims or will claim that any contractual right to share in increased or additional benefits under the Benefit Plan was interfered with by amendments to the Benefit Plan effective April 1, 1967,

(a) state his name and present residence address;

(b) with respect to each and every contract or agreement which he claims gives such a right,

(1) state the date and place where made;

(2) state whether it was written or oral or both, and

(A) to the extent written, state the exact words constituting the entire contract or agreement, the exact words of that portion claimed to give rise to the right, the name and present residence address of each person who signed it, the capacity in which each signed, the party each represented in signing, the name and present residence address of each other person present at the signing, describe each such contract or agreement in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(B) to the extent oral, state the substance of the contract or agreement, the name and present residence address of each person who agreed, the capacity in which each acted, the party represented by each person who agreed, the name and present residence address of each other person present when the contract or agreement was reached, whether any memorandum of the contract or agreement was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(C) state whether it by its terms required approval or ratification by any person* or group of persons, and, if so, separately identify each person or group of persons whose approval or ratification was required; and

(D) state whether it was submitted for ratification or approval to any person or group of persons, and, if so, as to each such submission

(i) state the date and place;

(ii) separately identify each person or group of persons to whom it was made;

(iii) state whether it was oral or in writing or both, and

(*a*) to the extent oral, state the substance of the contract or agreement submitted, the name and present residence address of the person or persons who made the submission, whether any memorandum of it was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(*b*) to the extent written, state the exact words of the contract or agreement submitted, the name and present residence address of the person or persons who made the submission, describe it in a manner suitable for use as a description in a subpoena, state its present location, and

*As used in subparts (b)(2)(C) and (D) of this interrogatory, the word "person" shall include corporations, partnerships, unincorporated associations and business trusts.

identify the person now having custody or control of it;

(iv) state whether it resulted in approval or ratification of the contract or agreement, and, if so, state whether such approval or ratification was oral or in writing or both, and

(*a*) to the extent oral, state the substance of the approval or ratification, whether any memorandum of it was made, and, if so, separately list and describe each such memorandum in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it;

(*b*) to the extent written, state the exact words of the approval or ratification, describe it in a manner suitable for use as a description in a subpoena, state its present location, and identify the person now having custody or control of it.

PLAINTIFF'S SUPPLEMENTAL ANSWER TO INTERROGATORY 4 OF DEFENDANTS BUNNING AND HALL.

4(b) Plaintiff relies on the oral agreement dated February 16, 1954, the substance of which is set forth in plaintiff's answer to SEGAR Interrogatory 3d (3)(B); on press release dated February 16, 1954 [A. 54a], and memorandum attached thereto [A. 52a-53a], copies of which are annexed hereto; on written memorandum dated March 12, 1954, [A. 71a-74a] copy of which is annexed to plaintiff's answer to interrogatories of defendant SEGAR; and written agreement dated October 1, 1954, copy of which is likewise annexed thereto [A. 68a-70a]. The agreements

contained in the memorandum of February 16, 1954, were subject to ratification by the sixteen major league baseball clubs and by the sixteen player representatives, one from each major league club. Such agreements were ratified by the American League Clubs and the National League Clubs at separate meetings held March 12, 1954, and by the representatives of the players on April 11, 1954.

PLAINTIFF'S ANSWER TO SEGAR INTERROGATORY 3d. (3) (B) REFERRED TO IN ANSWERING INTERROGATORY NUMBERS 4 AND 13 OF DEFENDANTS BUNNING AND HALL.

On or about February 16, 1964, [sic] an oral agreement was entered into among the persons whose names and addresses are set forth in "(3) (A)". Messrs. Galbreath and Greenberg represented the National League clubs and American League clubs, respectively, and Messrs. Kiner and Reynolds represented the National League players and the American League players, respectively. The substance of such agreement was that the previously existing pension plan would be continued with certain modifications, that all future increases in benefits would be shared equally by all vested members of the plan, whether active, inactive or retired, that the Major League clubs would allocate 60% of the proceeds from the All Star Game and 60% of the proceeds from the radio and television rights of the World Series Games to the pension fund and the remaining 40% of the proceeds from the All Star Game and the remaining 40% of the proceeds from the radio and television rights of the World Series Games to be retained by the Major League clubs and that a pension committee would be established composed of one representative of each Major League and one active player representative from each Major League to study and determine what modification and amendment should be made in the then existing pension plan.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 634

ALLIE REYNOLDS, ETC.,

Petitioner,

—against—

JAMES P. BUNNING, RICHARD HALL, CHARLES SEGAR and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

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Of Counsel.

October 2, 1970

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STATEMENT 1

ARGUMENT:

The Petition for a Writ of Certiorari should be dismissed 2

IN THE

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

This brief in opposition to the petition of Allie Reynolds for a writ of certiorari is submitted on behalf of the Major League Baseball Players Association, intervening defendant below.

STATEMENT

The Players Association is the duly authorized collective bargaining agent of all active Major League baseball players, coaches, trainers and field managers. As such it negotiated and was a party to a contract dated January 1, 1967, with the 20 Major League clubs pursuant to which the

Major League Baseball Players Benefit Plan ("Benefit Plan") existed from April 1, 1967, through March 31, 1969 (A. 89a).*

During this period the amounts agreed to be paid into the Pension Fund were substantially more than under the contract in effect from 1962-67, and as a result it was possible to amend the Benefit Plan effective April 1, 1967, to increase primary pension benefits on retirement for all vested members active at any time in preceding ten years, and for all members who would become vested after March 31, 1967. These amendments were approved by the Players Representatives on February 28, 1967, and were ratified by a unanimous vote of the players, managers, coaches and trainers (Aff. of Marvin Miller dated February 14, 1968, p. 3).

The Players Association intervened below because Reynolds was attacking its power to enter into collective bargaining agreements with the Major League club owners with respect to pension matters and because the rights asserted by Reynolds, to always share equally in negotiated benefit improvements, if upheld, would mean either a substantial reduction in the additional benefits provided by the April 1, 1967 amendments or a very large increase in unfunded liabilities for the Benefit Plan. The practical effect of either is to take money out of the pockets of the active members.

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*The Appendix to Appellants' Brief below is cited as "A".

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DISMISSED.

Reynolds is asserting a right to share forever in any additional benefit granted under the Benefit Plan based on an alleged oral agreement made in 1954 and general principles of equity. Reynolds' contract claim is utterly without merit and was properly rejected by the courts below. His additional claim of a right based on general equitable principles ignores the realities of collective bargaining. It is the active players whose activities are now generating the funds paid into the pension fund, and it is for them, together with the employers with whom they are negotiating, to decide what additional benefits should be purchased therewith. This was the procedure followed with respect to the 1967 amendment at issue in this action.

Thus, the cases cited by Reynolds holding that a pension committee may not arbitrarily interpret the term of a pension plan are inapplicable.

Moreover, Reynolds asserts no claim that the class he represents has not or will not receive every dollar they were entitled to under the Benefit Plan as it existed when they ceased playing baseball. Indeed, in 1957 and again in 1962, the pension benefits of this class were substantially increased by amendments to the Benefit Plan voluntarily adopted by the active players, which provided such increased benefits for all vested members who had been active in the Major Leagues at any time in the preceding ten years. Thus, maximum monthly benefits to which Reynolds' class is entitled were increased from $100 to $786.28 since they ceased playing. They were excluded from the additional benefits negotiated by the active players in 1967, because by that time they had been inactive for more than 10 years or had already started to draw their pension benefits.

CONCLUSION

For the foregoing reasons, and for those set forth in the Brief submitted on behalf of Respondents Bunning, Hall and Segar, the petition for a writ of certiorari should be denied.

October 2, 1970.

Respectfully submitted,

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